***United States Court of Appeals***

***for the Second Circuit***


# APPELLEE'S BRIEF

Original

To be argued by
ROBERT N. COWEN, ESQ.

75-2071

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA ex rel.
AMERICO LLUVERAS,

Petitioner-Appellee,

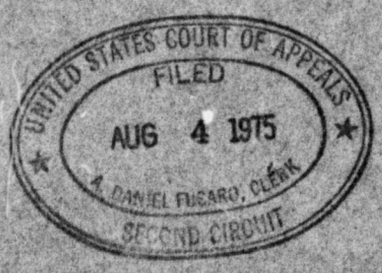
- against-

HON J. EDWIN LaVALLEE, Superintendent,
Clinton Correctional Facility,
Dannemora, New York,

Respondent-Appellant.

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

# BRIEF FOR PETITIONER-APPELLEE

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UNITED STATES COURT OF APPEALS
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No. 75-2071

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Appeal from the United States
District Court for the Southern
District of New York

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# BRIEF FOR PETITIONER-APPELLEE

## STATEMENT OF THE ISSUES

1. Whether the District Court's finding, following an evidentiary hearing, that Lluveras' confession was involuntary, should be reversed, where there is overwhelming evidence in the record that Lluveras was ill and suffering severe abdominal pains from narcotics withdrawal when the confession was made?

2. Whether it was proper for the District Court to receive expert medical testimony as to the

physical effects of narcotics withdrawal on the voluntariness of Lluveras' confession, where this Court, on a prior appeal, ordered an evidentiary hearing to permit the facts surrounding the confession to be fully developed?

## STATEMENT OF THE CASE

This is an appeal by Respondent, a New York State prison official, from an order of the United States District Court for the Southern District of New York (Palmieri, D.J.), following an evidentiary hearing, granting Petitioner Americo Lluveras' application for a writ of habeas corpus. (*171a; Judge Palmieri's opinion appears at 158a). On a prior appeal in this proceeding, the United States Court of Appeals for the Second Circuit directed the District Court to hold an evidentiary hearing on the voluntariness of Lluveras' confession. (36a-37a). Based on evidence of Lluveras' severe symptoms of narcotics withdrawal over a prolonged period of interrogation, corroborated by expert medical testimony, the District Court found Lluveras' confession to be involuntary. Accordingly, the District Court granted the writ and vacated Lluveras' State court conviction.

### A. PRIOR PROCEEDINGS

On March 1, 1967, Lluveras was convicted, upon a jury verdict of three counts of Robbery, first

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*All page numbers followed by the letter "a" refer to the appropriate page number in the Appendix of this Appeal.

degree, by the then Court of General Sessions of New York County, the Hon. Irwin D. Davidson presiding. Lluveras, then twenty-two years old, was sentenced to concurrent terms of ten to thirty years. Lluveras was alleged to have participated, with four other men, in the armed robbery of a number of persons engaged in a card game in the early morning hours of April 23, 1960. Only one of the victims even attempted to report the robbery to the police. (**T.T. pp. 80, 95, 108, 111, 205). No victim was able to identify the perpetrators. (T.T. 72, 93, 145, 173). The evidence against Lluveras consisted of the testimony of an admitted participant in the robbery and Lluveras' own confession. Lluveras' conviction was affirmed on appeal. People v. Lluveras, 19 A.D. 2d 525, 240 N.Y.S. 2d 364 (1st Dept. 1963), leave to appeal denied (July 9, 1963, Fuld, J.), reapplication denied (January 19, 1965, Fuld, J.), cert. denied, 380 U.S. 986 (1965).

On September 21, 1965, Lluveras filed a petition in Supreme Court, New York County, for a writ of error coram nobis, alleging inter alia that his confession was inadmissible because obtained by coercion. Pursuant to People v. Huntley, 15 N.Y. 2d 72, 255 N.Y.S. 2d 838 (1965), a hearing was held on May 6, 1966 before Judge

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*All page numbers preceded by the letters "T.T." refer to the Trial Transcript of November 21-23 and December 5, 1960.

Davidson, who had presided at the trial. Judge Davidson refused to permit introduction of expert medical testimony bearing on the effects of narcotic withdrawal on the voluntariness of Lluveras' confession. (**H.H. pp. 177-178). The petition for coram nobis relief was denied by Judge Davidson in an order entered June 22, 1966 and the order was affirmed on appeal. People v. Lluveras, 31 A.D. 2d 892, 299 N.Y.S. 2d 100 (1st Dept. 1969), leave to appeal denied (March 20, 1969, Fuld, Ch. J.), reapplication denied (June 19, 1969, Fuld, Ch. J.), cert. denied, 396 U.S. 457 (1969).

On February 4, 1971, Lluveras filed a petition pro se for a writ of habeas corpus in United States District Court for the Southern District of New York. (2a). The petition was dismissed by the Hon. Edmund L. Palmieri, in an endorsement filed June 2, 1971. (33a). Lluveras took an appeal pro se to this Court, which by order dated September 30, 1971, vacated the order dismissing the writ and directed the District Court "to conduct an evidentiary hearing on the issue of the voluntariness of Lluveras' confession." (36a-37a).

On November 21, 1974, an evidentiary hearing was held before Judge Palmieri. Lluveras' principal

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**All referenced to page numbers preceded by "H.H." refer to the transcript of the Huntley Hearing held before Judge Davidson on May 6, 1966.

contention was that his confession was involuntary because obtained over a prolonged period of interrogation while he was undergoing the disorienting pains and discomfort of narcotics withdrawal. (38a). Based on the evidence adduced at the hearing, which included the testimony of a highly qualified medical expert specializing in the drug field, the District Court found Lluveras' confession to be involuntary. By order dated March 21, 1975, the District Court granted the writ of habeas corpus and vacated Lluveras' convictions (172a). By its terms, the order was stayed pending determination of this appeal.

Lluveras has served twelve years of his sentence in prison and is currently on parole.

B. THE FACTS

1. Early History - Teenage Drug Addiction

Americo Lluveras was born in New York City and grew up in Spanish Harlem. (72a-73a). At about thirteen years of age he was sent to Lincoln Hall Reform School for truancy. (72a-74a).

At Lincoln Hall, when he was about fourteen years of age, Americo was given a mainline injection of heroin by one of the reform school boys. Thereafter, during his stay at the reform school, Americo frequently received heroin either by injection or for sniffing from

boys who went home for weekends or holidays. (72a-74a).

When he left Lincoln Hall at 15 or 16 years of age, Americo began sniffing heroin two or three times a day. He soon began to take heroin regularly by mainline injection. At the age of sixteen he was taking three to four mainline shots per day, amounting to $30 to $40 worth of heroin, and continued to do so for a period of two years. (74a-76a).

In June of 1956 Americo was arrested for heroin possession and ordered hospitalized for five months at North Brothers Island. Upon his confinement, he suffered serious withdrawal pains, including stomach cramps, nausea and vomiting. (76a-79a).

Soon after his release on parole from Brothers Island in October 1956, he began using drugs again. In November 1956, his probation was revoked and he was imprisoned at Coxsackie where he remained for nearly three years until June 1959. (78a-79a).

Within two and half months of his release from Coxsackie, he began again to use drugs finding that he would experience pains if he did not take heroin. In November 1959 his parole officer detected needle tracks on his arm and caused his parole to be revoked. (78a-80a).

Americo was released on about December 4, 1959

after a month in jail. During this period his mother had moved from Spanish Harlem to Baruch Place near Houston Street.

On the very afternoon of his release from jail, Americo returned to his old uptown neighborhood and procurred a mainline heroin injection. Soon once again he was taking four or five shots per day, sustaining a $30 to $40 habit. (81a-83a).

2. Petitioners' Arrest and Questioning

On May 4, 1960, Americo learned that detectives had come to his mother's apartment looking for him. He did not return home that night but went back uptown and took drugs with a friend. The next morning he had breakfast about 9:30 A.M. and then called the police to advise them he would come to meet them. Instead, he took another shot of heroin around noon or shortly before. (83a-86a).

At about 3:00 P.M. he went downtown to his mothers's apartment, had a glass of milk and a piece of cake and turned himself in to the detectives who were waiting there. (86a).

He was taken by the police to the 24th Precinct Station where he arrived between 4:00 and 5:00 P.M. (87a; *Stip; H.H. 14, 183, 237). He was left alone in

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*References to "Stip" refer to a Stipulation entered into by counsel for both sides prior to the District Court hearing and set forth at pages 3-4 of Respondent's brief.

a room for two or three hours before detectives began to interrogate him. (88a; H.H. 183, 238). Throughout the night the police questioned him concerning a homicide and various robberies. (90a-91a; H.H. 167, 187, 200, 246). He confessed to a large number of crimes including crimes committed during his incarceration. (91a).

The questioning by at least four officers continued intermittently through the night (Stip. H.H. 167, 187, 200). Assistant District Attorney Sandler arrived at the police station around 5:00 or 6:00 A.M. (92a; H.H. 207). He questioned Americo for about an hour (H.H. 149) and then at 8:05 A.M. he took a formal question and answer statement before a court stenographer which was over 70 pages long and lasted until 9:30 A.M. (92a-93a; Stip. H.H. 167, T. 721). This Q&A contained the confession which was introduced against Lluveras at his trial.

The police did not any any time during the night advise Lluveras that he had a right to remain silent or to have counsel, nor did they warn him that his statements could be used against him. (Stip.). When the District Attorney arrived in the morning and began questioning, he did not advise Lluveras of any rights. At the start of the formal Q&A at 8:00 A.M.,

he advised Lluveras of his right to remain silent; this was the first and only warning Lluveras received and was given only after ten or twelve hours of questioning, during which Lluveras had made numerous admissions. (Stip.).

At no time during the long night of questioning did Lluveras have any chance to sleep. (Stip.).

3. The Pain Suffered by Petitioner during the Night of Interrogation

The evidence establishes that as the night of questioning went on, Lluveras felt increasing pains, stomach cramps, nausea, diarrhea and agony as a result of the withdrawal of the drug he had taken so constantly for the better part of his life. The effect of the last shot taken around noon began to wear off around 6:30 or 7:00 P.M. From that point on for the next fourteen hours of questioning Americo experienced first a jittery restlessness, yawning and twitching. His eyes and nose ran. Soon he began to feel stomach cramps and cold chills, and eventually diarrhea, nausea, vomiting and hot and cold sweats. (90a-91a). He had had nothing to eat since breakfast but a glass of milk and a piece of cake at 3:00 P.M. (87a). He had no sleep throughout the night (Stip.). The pains of the withdrawal symptoms, coupled with the prisoner's fatigue and weakness from hunger were such that his primary concern was to get

the questioning over with so that he could get medication or drugs. It was at the end of this night of questioning that he gave the Q&A which was received against him at trial.

Lluveras's testimony as to the pains experienced is solidly confirmed by the testimony of Dr. Milford Blackwell whose qualifications and expertise as a specialist in problems of drug addiction are beyond question. (See 45a-47a). Dr. Blackwell testified on the basis of a mental and physical examination and a complete history of Lluveras and his heroin addiction from childhood. He concluded, consistent with Lluveras's testimony that surely within six or seven hours of his last fix, Lluveras would have begun to feel withdrawal symptoms. These would have begun as an edgy feeling, running nose, watery eyes and would have developed into abdominal cramps, nausea, vomiting and diarrhea (48a-53a). He concluded the confession given by Lluveras under the circumstances would not have been voluntarily given. (50a).

That Lluveras was an addict and heavy user and that he was experiencing pains of withdrawal during the night was also confirmed by the testimony of the police at the coram nobis hearing.

In the first place, he was known by the police to be a heavy user of narcotics and was so described by

a police department alarm issued shortly before his arrest. (H.H. - 251). As to Lluveras's pains, Detective McPartland acknowledged that, as the evening wore on, the symptoms of withdrawal became more evident and that "he was in need of another shot . . . I'd say, yes, he was in need of drugs as the evening wore on and the shot that he had taken was wearing off him." (H.H. - 198, 200). Detective Coyne also acknowledged that the defendant was experiencing withdrawal, although he sought to minimize the quantity of pain saying that the withdrawal was "not too bad. He was all right. He was standing up. He was talking." (H.H. - 246, 247).

4. Testimony Concerning Petitioner's Present Good Character and Veracity

To substantiate his credibility, petitioner called three witnesses to testify to his present reputation for truth, veracity and dependability. They were Rafael Ferrer, Assistant Dean of Students of Hunter College, who for many years has been active in community affairs and youth counseling in East Harlem (60a-66a); Joseph Norton, an Assistant Professor of History at Marist College in Poughkeepsie where Lluveras is now a student and housemaster of the dormitories (66a-70a); and Frank Bonilla, Professor of Political Science and Director of the Center for Puerto Rican Studies of the

City University of New York (125a-127a). These three witnesses testified to the extraordinary rehabilitation of petitioner Lluveras since his days as a down and out drug addict in the 1950's. Their testimony showed that during his years in prison Lluveras had become a trusted person, and intensely interested in learning and growing and helping other people to deal with their problems (65a; 126a) and that since prison his dependability and his generosity had made him among the most respected and trusted students in his college. (68a-70a).

## ARGUMENT

### POINT I

### EVIDENCE OF THE PROLONGED INTERROGATION OF LLUVERAS, WHILE HE SUFFERED THE AGONIES OF WITHDRAWAL, AMPLY SUPPORTED THE FINDING THAT LLUVERAS' CONFESSION WAS INVOLUNTARY

A confession which is not freely and voluntarily given may not be used in evidence, and a conviction obtained through the use of an involuntary confession may not stand. Jackson v. Denno, 378 U.S. 368, 376 (1964). To be admissible, a confession must not be the product of a will overborne, but of a rational intellect. See Lego v. Twomey, 404 U.S. 477 (1972); Townsend v. Sain, 372 U.S. 293 (1963); Reck v. Pate, 367 U.S. 433, 440 (1961); Blackburn v. Alabama, 361

U.S. 199, 208 (1960); United States v. Silva, 418 F.2d 328 (2d Cir. 1969); United States v. Arcediano, 371 F. Supp. 457 (D. N.J. 1974).

The circumstances of Lluveras' confession show clearly that it was not freely and voluntarily given. His long and tragic history of drug addiction, beginning at age 13, is not disputed. He was a heavy user of drugs at the time of the interrogation. As the night of interrogation wore on, the painful symptoms of narcotic withdrawal became more and more severe --- nausea, aches, cramps, vomiting. He had no food or sleep. Soon the pain became unbearable. Lluveras' only thought was to get some drugs or medication to alleviate the pain. A confession under these circumstances was hardly voluntary.

There was considerable evidence, apart from Lluveras' own testimony to support the District Court's finding of involuntariness. Dr. Blackwell, a conceded medical expert in the field of drug addiction testified in detail to the kind of symptoms that a heavy drug user would have experienced that night. Based on Lluveras' heavy habit and the time of his last injection, Dr. Blackwell offered expert medical verification of Lluveras' suffering during the night and morning in question. Indeed the police themselves testified at the earlier coram nobis

hearing that Lluveras' symptoms of drug withdrawal became evident during the interrogation. Lluveras' own testimony was given added weight by a unique array of witnesses who testified to his reputation for truth and veracity in the community. Their testimony told the story of a former drug addict, in trouble from the age of 13, who had transformed himself into a valuable member of the community --- a former addict who has rehabilitated himself and has devoted his time to the rehabilitation of others.

Regardless of where the burden of proof lay in this proceeding, as the District Court stated in its opinion, Lluveras has established by the overwhelming weight of the evidence that his confession was involuntary. Whether the pain of narcotics withdrawal will render a confession involuntary is a factual matter to be determined in light of the circumstances of each case. In numerous cases the courts have recognized that the painful symptoms of withdrawal may invalidate a confession given under their influence, although in some cases the courts have found the defendant's testimony as to his condition unworthy of belief. See, e.g., Ortiz v. United States, 318 F.2d 450, 453 (9th Cir. 1963), cert. denied, 376 U.S. 953; United States v. Arcediano, supra, 371 F. Supp. 457, 466 (D.N.J. 1974); United States v. Young, 355 F. Supp. 103, 107-108 (E. D.

Pa. 1973); United States ex rel. Sadler v. Com. of Pa., 306 F. Supp. 102 (D. Pa. 1969), aff'd., 434 F.2d 997 (3d Cir. 1970). Other courts, like the court in United States ex rel. Collins v. Maroney, 287 F. Supp. 420 (E.D. Pa. 1968), have found a confession to be involuntary when the evidence established that the defendant was a heavy drug user experiencing severe withdrawal symptoms.

Rule 52 of the Federal Rules of Civil Procedure provides that the findings of a district court may not be set aside unless they are clearly erroneous; Rule 52 applies to the evidentiary hearing held in this case. See, e.g., Mosher v. LaVallee, 491 F.2d 1346, 1347 (2d Cir. 1974), cert. denied, 416 U.S. 906 (1974); United States ex rel. Fitzgerald v. LaVallee, 461 F.2d 601, 604 (2d Cir. 1972), cert. denied, 409 U.S. 885 (1972). It is respectfully submitted that this Court, in ordering a hearing on the prior appeal, implicitly held that there were critical gaps in the State factfindings procedures. This Court necessarily concluded that the State coram nobis hearing failed to adequately develop the material facts of Lluveras' withdrawal symptoms and their effect on his confession within the meaning of 28 USC § 2254(d)(3). Such a conclusion followed from Judge Davidson's refusal, at the coram nobis hearing, to receive expert medical testimony relating to drug withdrawal. Therefore, the District Court's findings,

following a full evidentiary hearing on the voluntariness of Lluveras' confession and overwhelmingly supported by the evidence, should be accorded great weight by this Court.

Under 28 USC § 2254(d), if the State proceedings were deficient, they are not entitled to any presumption of regularity. It is respectfully submitted that this Court, on the prior appeal determined that no presumption of regularity should attach to the State proceedings because Lluveras was precluded from demonstrating the withdrawal symptoms he experienced during interrogation. Having ordered the District Court to hold an evidentiary hearing, this Court should not set aside the District Court's findings. Those findings are amply supported by the record.

Respondent contends that LaVallee v. Delle Rose, 410 U.S. 690 (1973) obviated the need for an evidentiary hearing in this case. The Delle Rose case however did not involve the situation here, where the State court has refused to admit relevant evidence and to consider a critical constitutional issue. The sole question in Delle Rose was whether the State court had sufficiently articulated its findings of fact. In deciding, based on the State court record, that the opinion of the State court met the requirement of 28

USC § 2254(d), the Supreme Court in Delle Rose did not limit the discretion of a district court to hold an evidentiary hearing on a habeas corpus petition. See United States ex rel. Oliver v. Vincent, 498 F.2d 340 (2d Cir. 1974). Moreover the decision to hold a hearing in this case did not rest in the discretion of the District Court, but was ordered by this Court on the prior appeal.

## POINT II

### UNDISPUTED EVIDENCE OF LLUVERAS' HEAVY NARCOTIC ADDICTION LAID THE FOUNDATION FOR EXPERT MEDICAL TESTIMONY ON THE EFFECTS OF WITHDRAWAL.

Lluveras testified to the withdrawal symptoms he experienced during the many hours of interrogation. There can be no doubt on the record that Lluveras had been a heavy user of narcotics. Indeed, Respondent stipulated at the outset of the hearing that Lluveras was a narcotics addict. The police knew of Lluveras' addiction. It was evident to them during questioning that Lluveras needed a "shot." This evidence, essentially uncontradicted, was plainly an adequate foundation for the introduction of expert testimony as to the effects of drug withdrawal.

In United States v. Watson, 469 F.2d 362 (5th Cir. 1972), a case analogous to the facts in this

proceeding, the Fifth Circuit remanded for a hearing solely to permit expert medical testimony to be introduced as to the effects of insulin shock on the voluntariness of the defendant's confession. There, as here, there was undisputed evidence that the defendant was suffering from the effect of drugs - an oversupply of insulin in the defendant's blood-stream. There had been testimony given by FBI agents that, on balance, the defendant appeared rational and coherent. The Fifth Circuit, however, declined to rule on the issue of the voluntariness of the defendant's confession without the benefit of expert medical testimony:

> "The missing ingredient in this case is some sort of medical expert testimony which will serve as a guide to the district court in deciding what indeed was the probable mental condition of appellant at the time he was interviewed." (469 F.2d at 367).

Under Rule 702 of the Federal Rules of Evidence (effective July 1, 1975), the test for admission of expert testimony is whether it will assist the trier of fact in understanding the evidence or determining a factual issue; Rule 702 is a codification of pre-existing federal case law. 3 Weinstein's Evidence: Commentary on Rules of Evidence for the United States Courts and Magistrates (1975), ¶ 702[01] at pp. 702-4 - 702-5. In doubtful cases, according to the Weinstein commentary, the intent of the drafters of the Rules was to permit

introduction of such evidence. The wide lattitude permitted a trial judge to admit expert testimony in a jury trial, applies, a fortiori, to an evidentiary hearing before a District Court sitting without a jury.

Dr. Blackwell was an expert medical witness with most unique credentials in the drug field. He is a psychiatrist. He has had 10 years of experience working with drug addiction. Certainly the District Court was entitled to conclude that his expertise could be of some assistance in gauging the credibility of the other evidence. Dr. Blackwell examined Lluveras. He observed the tell-tale tracks on his body that confirmed a long and heavy addiction to drugs. He could authoritatively assess the nature of a $30 to $40 a day drug habit. Most importantly, Dr. Blackwell could describe the kind of symptoms that a heavy drug user would experience after hours without drugs, food or sleep. Dr. Blackwell's testimony assisted the District Court in determining the credibility of the other evidence of Lluveras' withdrawal symptoms during the interrogation.

Contrary to Respondent's assertion, Dr. Blackwell's testimony was not the primary basis for the finding of involuntariness. There was ample support from Lluveras' own testimony at the hearing, coupled with the earlier testimony of the police that they observed Lluveras' need for "another shot."

Dr. Blackwell's testimony simply added support to the other evidence which overwhelmingly established the involuntariness of the confession.

## CONCLUSION

The order of the District Court granting the writ of habeas corpus, vacating Lluveras' conviction, and directing his discharge unless retried within sixty (60) days should be affirmed and the stay granted by the District Court pending determination of this appeal should be vacated.

Dated: New York, N.Y.
August 4, 1975

Respectfully submitted,

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